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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

FILE:

Office: Indianapolis (CHI)

Date:

JUL 17 2003

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applications were denied by the District Director, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the matter remanded for further action.

The applicant is a native and citizen of Iceland who was found to be inadmissible to the United States under section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The record reflects that the applicant was convicted in 1990 of Conspiracy to Make False Statements to the Department of Housing and Urban Development (HUD), Bank Fraud and Income Tax Fraud. He was sentenced to 27 months imprisonment and three years of supervised release. Therefore, the applicant needs a waiver of that ground of inadmissibility on Form I-601.

On April 1, 1996, an immigration judge denied the applicant's application for permanent residence as well as a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), for failure to establish extreme hardship to his U.S. citizen wife. He found the applicant deportable under former section 241(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1251(a)(2)(A)(ii), for having been convicted of multiple crimes. The Board of Immigration Appeals (the Board) dismissed an appeal of that decision on August 29, 1997, and the applicant was removed from the United States on April 21, 1998. Therefore, he is also inadmissible under section 212(a)(9)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i)(I), for having been removed from the United States. The applicant requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), on Form I-212.

On April 19, 2000 the district director denied both the I-212 application for permission to reapply for admission and an I-601 waiver of inadmissibility. On November 16, 2001 the applicant filed a new Form I-601. That application was denied on June 12, 2002 and is the subject of the current appeal.

Service instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) shall be rejected on the ground that the applicant is not "otherwise admissible" as required and the fee for filing the application refunded.

There is no evidence in the record that a new I 212 application has been filed and approved. Therefore, based on the current record, the applicant is not "otherwise admissible" and the most recent application for a waiver should have been rejected and the fee refunded.

If the district director has evidence that an I-212 application has been approved, he shall certify the record of proceeding to the AAO for review and consideration of the appeal regarding the Form I-601 application. However, if the district director has denied the Form I-212 application, he shall certify that decision to the AAO for review, reject the Form I-601 application, and refund the fee.

ORDER: The appeal is rejected. The decisions of the district director are withdrawn. The matter is remanded for further action consistent with the foregoing discussion.